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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/584,375 | 05/31/2000 | Bruce Henry Garvie | GAR-001 | 1354 |

7590 12/03/2002
Aquilino Welsh & Flaxman PC
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2341 Jefferson Davis Hwy
Arlington, VA 22202

EXAMINER

STASHICK, ANTHONY D

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3728

DATE MAILED: 12/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

SM

Office Action Summary

Application No.

09/584,375

Applicant(s)

GARVIE, BRUCE HENRY

Examiner

Anthony D Stashick

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 September 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 12-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 12-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 May 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-5 and 12-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the EP reference to Aotani EP 342,232 (EP '232) in view of MacNeill 5,996,260. EP '232 discloses all the limitations substantially as claimed including the following: an insert (41a, 51a, 61a, 71a) ² a plastic traction member (41b, 51b, 61b, 71b); ³ the insert and traction member are distinct elements (see Figures 4b, 5b, 6b, 7b); the insert formed of a synthetic plastic material (see col. 5, lines 15-46 and col. 3, line 58-col. 4, line 15); the insert having a stem portion with releasable engagement means (see Figures 4b, 5b, 6b, 7b, stem is threaded); the traction member secured to the insert and encasing the insert except for the engagement means (see Figures 4b, 5b, 6b, 7b); the insert made entirely of synthetic plastic material (see col. 5, lines 15-46 and col. 3, line 58-col. 4, line 15); the stem portion having a first end (with threads) and a second end (with flange); the first end of the stem portion having engagement means (threads); the second end having a securing formation (flange); the insert having a spike opposite the first end and aligned with a traction member to function as a visual wear indicator (see Figures 6 and 8); traction member has a pair of passages arranged to receive a fastening tool (41d, 61d, 71d); the flange is extending radially from the stem (see Figures); the flange has a plurality of apertures through it (those for fastening the cleat to the shoe). EP '232 does not teach or disclose the plastic members having different hardnesses or colors. MacNeill '260 teaches that the different plastics used in a spike insert and traction member can be made of different colors (col. 3, line 58-col. 4, line 11) to aid in

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determining the wear and tear on the cleat. MacNeill '260 also teaches that the material of the traction member and the base can be made of different hardnesses, the material of the traction member being softer (i.e. less hard) than the material of the base (see col. 3, lines 11-42), the softer outer layer aiding in improving traction and the stiffness and hardness of the base layer aiding in giving support to the projections. Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to make the plastic members of EP '232 out of different hardnesses and colors, as taught by MacNeill '260, to aid giving support to the projection and help in dispersing impacts and to aid in visually determining the wear and tear on the cleat. With respect to claim 3 and the hardness of the materials, it appears that it would have been a mere matter of testing and optimization to find the hardness of the material of the insert that would allow for proper mounting of the cleat and preventing shearing of the stem.

Response to Arguments

3. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the

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advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, "should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers or other general questions should be directed to Tech Center 3700 Customer Service at (703) 306-5648, email CustomerService3700@uspto.gov.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony D Stashick whose telephone number is 703-308-3876. The examiner can normally be reached on Tuesday through Friday from 8:30 am until 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 703-308-2672. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

Other helpful telephone numbers are listed for applicant's benefit.

| | |
|---------------------------------|---------------------|
| Allowed Files & Publication | (703) 305-8322 |
| Assignment Branch | (703) 308-9287 |
| Certificates of Correction | (703) 305-8309 |
| Drawing Corrections/Draftsman | (703) 305-8404/8335 |
| Fee Increase Questions | (703) 305-5125 |
| Intellectual Property Questions | (703) 305-8217 |
| Petitions/Special Programs | (703) 305-9282 |
| Terminal Disclaimers | (703) 305-8408 |
| Informal Fax for 3728 | (703) 308-7769 |

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If the information desired is not provided above, or has been changed, please do not call the examiner (this is the latest information provided to him) but the general information help line below.

Information Help line
Internet PTO-Home Page

1-800-786-9199
<http://www.uspto.gov/>



Anthony D Stashick
Primary Examiner
Art Unit 3728

ADS
November 29, 2002